

SCHEDULES

SCHEDULE 5

Article 22

FOR THE PROTECTION OF DŴR CYMRU CYFYNGEDIG

1. For the protection of Dŵr Cymru Cyfyngedig (“the Company”) the following provisions shall, unless otherwise agreed in writing between the undertaker and the Company, have effect in relation to the carrying out of the authorised works or the exercise of any other powers conferred by this Order.

2. In this Schedule—

“the 1991 Act” (“*Deddf 1991*”) means the New Roads and Street Works Act 1991;

“functions” (“*swyddogaethau*”) includes powers and duties;

“in” (“*mewn*”), in a context referring to apparatus or alternative apparatus in land, includes a reference to apparatus or alternative apparatus over, under or upon land;

“relevant pipe” (“*pibell berthnasol*”) means:

- (a) any mains, pipes or other apparatus belonging to or maintained by the Company for the purposes of water supply; and
- (b) any drain or works vested in the Company under the Water Industry Act 1991(1); and
- (c) any sewer which is so vested or is the subject of a notice of intention to adopt given under section 102(4) of that Act or an Agreement to adopt made under section 104 of that Act, including a sludge main, disposal main (within the meaning of section 219 of that Act) or sewer outfall and any manholes, ventilating shafts, pumps or other accessories forming part of any such sewer, drain or works, and includes any structure in which a relevant pipe is or is to be located or which gives or will give access to the relevant pipe;

“work” (“*gwaith*”) means any of the authorised works.

3. This Schedule does not apply to apparatus in respect of which the relations between the undertaker and the Company are regulated by the provisions of Part 3 of the 1991 Act.

4. Nothing in this Order shall authorise the undertaker to raise, sink or otherwise alter the position of, or in any way to interfere with, a relevant pipe without the consent in writing of the Company, such consent not to be unreasonably withheld.

5. Before commencing the construction, alteration or reconstruction of any work which will or may be situated over or within 15 metres measured in any direction of, or (wherever situated) impose any load directly upon, a relevant pipe the undertaker shall furnish to the Company such proper and sufficient plans of the work as may reasonably be required by the Company and shall not commence the work until such plans thereof have been approved in writing by the Company (which approval shall not be unreasonably withheld) or settled by arbitration under article 26.

6. If within 56 days of plans being furnished to the Company under paragraph 5 the Company does not indicate in writing its disapproval and the grounds of its disapproval it shall be deemed to have approved the plans as furnished.

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7. The Company may as a condition of its approval of the said plans require any such modification to be made as may be reasonably required to secure a relevant pipe against interference or risk of damage and to secure a convenient means of access to it and the work shall be executed only in accordance with the plans approved in accordance with this schedule.

8. The approval of the Company of any plans under this article shall not (in the absence of negligence on the part of the Company) exonerate the undertaker from any liability or affect any claim for compensation under this schedule.

9. Where a relevant pipe is situated in or under any land owned or held for the purposes of the railways and is not removed or diverted the undertaker shall at its own expense maintain all culverts over such relevant pipes which are in existence at the coming into force of this Order so as to leave that relevant pipe accessible for the purposes of repairs.

10. Nothing in paragraph 9 shall have the effect of requiring the undertaker to carry out works of maintenance in respect of any culvert which the Company or any other person is liable to maintain.

11. The undertaker shall afford reasonable facilities to the Company for the execution and doing of all such works and things as may be reasonably necessary to enable it to inspect, repair, maintain, renew, replace, remove, alter or use a relevant pipe and in particular to carry out any protective works or any diversion required by reason of the exercise of the powers of this Order.

12.—(1) Where, in accordance with the provisions of this Schedule, the undertaker affords for the purposes of the authorised works to the Company facilities and rights for the construction and maintenance in land of the undertaker of alternative apparatus in substitution for apparatus to be removed, those facilities and rights subject to paragraph 12 (2) shall be granted upon the same terms and conditions as those pertaining to the substituted apparatus and if there is any dispute as to those terms and conditions, the dispute shall be referred to arbitration in accordance with article 26.

(2) In settling terms and conditions for the purposes of paragraph 12(1) in respect of the alternative apparatus to be constructed in or along any railway of the undertaker, the arbitrator shall—

- (a) give effect to all reasonable requirements of the undertaker for ensuring the safety and efficient operation of the railways and for securing any subsequent alterations or adaptations of the alternative apparatus which may be required to prevent interference with any proposed works of the undertaker or the traffic on the railways; and
- (b) so far as it may be reasonable and practicable to do so in the circumstances of the particular case, give effect to the terms and conditions if any applicable to the apparatus constructed in or along the railways for which the alternative apparatus is to be substituted.

13.—(1) Subject to the following provisions of this paragraph, the undertaker shall repay to the Company the reasonable expenses incurred by the Company in, or in connection with, the inspection, removal, alteration or protection of any relevant pipe or the construction of any new relevant pipe which may be required in consequence of the execution of any of the authorised works.

(2) If in accordance with the provisions of this Schedule apparatus of greater capacity or of greater dimensions is placed in substitution for existing apparatus of smaller capacity or of smaller dimensions and the placing of apparatus of that capacity or those dimensions, as the case may be, is not agreed by the undertaker or, in default of agreement, is not determined by arbitration in accordance with article 26 to be necessary, then, if such placing involves cost in the construction of works under this Schedule exceeding that which would have been involved if the apparatus placed had been of the existing capacity or dimensions as the case may be, the amount which apart from this paragraph would be payable to the Company by virtue of sub-paragraph (1), shall be reduced by the amount of that excess.

(3) For the purposes of sub-paragraph (2) an extension of apparatus to a length greater than the length of existing apparatus shall not be treated as placing of apparatus of greater dimensions than those of the existing apparatus.

(4) An amount which apart from this sub-paragraph would be payable to the Company in respect of works by virtue of sub-paragraph (1) shall, if the works include the placing of apparatus provided in substitution for apparatus placed more than 8 years earlier so as to confer on the Company any financial benefit by deferment of the time for renewal of the apparatus in the normal course, be reduced by the amount which represents that benefit.

14.—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any of the authorised works, any damage is caused to any apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of those works) or property of the Company, or there is any interruption in any service provided, or in the supply of any goods, by the Company, the undertaker shall-

- (a) bear and pay the cost reasonably incurred by the Company in making good such damage or restoring the supply; and
- (b) make reasonable compensation to the Company for any other expenses, loss, damages, penalty or costs incurred by the Company, by reason or in consequence of any such damage or interruption.

(2) Nothing in sub-paragraph (1) shall impose any liability on the undertaker with respect to any damage or interruption to the extent that it is attributable to the act, neglect or default of the Company, its officers, servants, contractors or agents.

(3) The Company shall give the undertaker reasonable notice of any such claim or demand and no settlement or compromise shall be made without the consent of the undertaker, which, if it withholds such consent, shall have the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand.

15. Nothing in this Schedule shall affect the provisions of any enactment or agreement regulating the relations between the undertaker and the Company in respect of any apparatus laid or erected in the former railway before the date on which this Order is made.

16. Any difference arising between the undertaker and the Company under this article (other than a difference as to its meaning or construction) shall be determined by arbitration under article 26.